

GARMAN TURNER GORDON LLP
GREGORY E. GARMAN
Nevada Bar No. 6654
E-mail: ggarman@gtg.legal
WILLIAM M. NOALL
Nevada Bar No. 3549
Email: wnoall@gtg.legal
TERESA M. PILATOWICZ, ESQ.
Nevada Bar No. 9605
E-mail: tpilatowicz@gtg.legal
DYLAN T. CICILIANO
Nevada Bar No. 12348
E-mail: dciciliano@gtg.legal
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Empery Tax Efficient, LP

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:	Case No. 22-14422-nmc
MUSCLEPHARM CORPORATION,	Chapter 11 __
Debtor.	

DECLARATION OF TIMOTHY SILVER IN SUPPORT OF
MOTION TO QUASH SUBPOENAS

I, Timothy Silver, make this Declaration under 28 U.S.C. § 1746 and declare as follows:

1. I am over the age of eighteen (18) years and competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

2. I am a Portfolio Manager with Empery Asset Management, LP. At all relevant times, Empery Asset Management, LP has acted as investment advisor to Empery, among others.

3. I submit this Declaration for all permissible purposes under the Federal Rules of

1 Civil Procedure and Rules of Evidence in support of the *Motion to Quash Subpoenas* (“Motion”),¹
2 filed by Empery Tax Efficient, LP.

3 4. On or about June 2, 2023, as requested by Mr. Drexler’s counsel, without limiting
4 the production of my text messages to those that are substantive, I produced a copy of ALL of my
5 text messages with any of Debtor’s directors, including without limitation Nicholas Rubin and Eric
6 Hillman, from December 15, 2022 to June 2, 2023, to my counsel. A true and correct copy of that
7 production is attached hereto as **Exhibit “A.”**

8 5. Also, to the best of my knowledge, I had no other text message conversations with
9 any of Debtor’s directors during the relevant time periods other than what was produced. I did not
10 knowingly delete any text messages with any of the Debtor’s directors.

11 6. At the time, I also checked the text messages on my cell phone and confirmed there
12 were no other text messages with any of Debtor’s directors during the relevant time periods.

13 7. Upon learning that Mr. Drexler had alleged we destroyed or withheld messages, I
14 again went back and reviewed and compared the text messages on my cell phone and on Ryan
15 Lane’s cell phone to what was produced. Again, I confirmed there were no other such text
16 messages.

17 I declare under penalty of perjury under the laws of the United States of America that the
18 foregoing is true and correct.

19 Executed this 16th day of June, 2023.

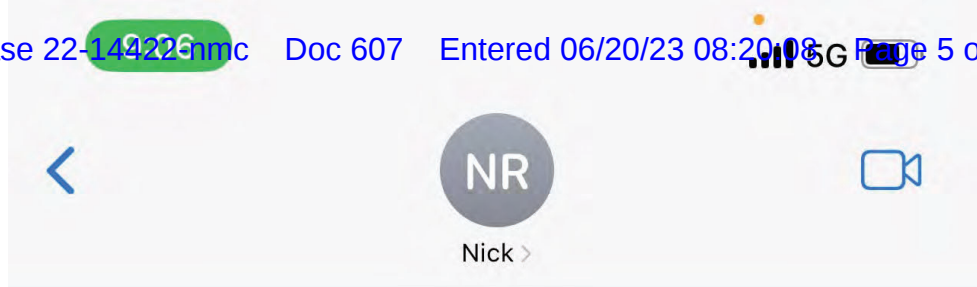
20 
21 _____
22 TIMOTHY SILVER
23
24
25
26
27

28 ¹ Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the Motion.

EXHIBIT “A”

Exhibit A-1

"Text messages between Nick Rubin
and Tim Silver"



iMessage
Thu, Feb 16 at 3:49 PM

I butt dialed you but I am in court

K sent you an email to set up a time to catch up

Thu, Mar 16 at 8:48 PM

Can you and Ryan pls call me after this call .

I'm at a dinner outside so I need to jump back inside for a few and can call when I walk out

Call you in twenty?

Delivered

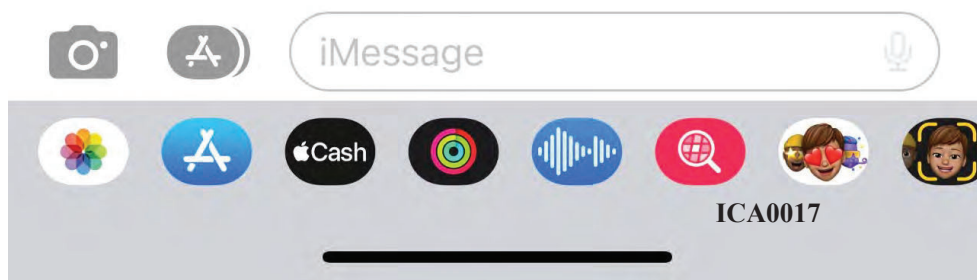
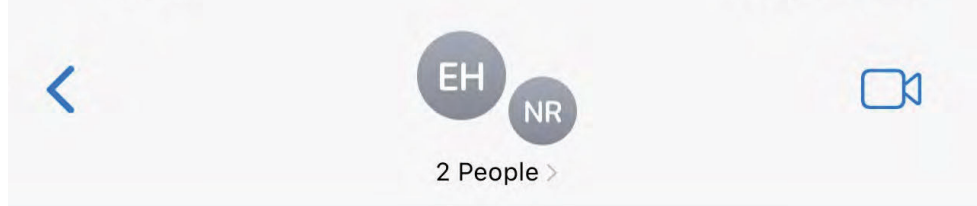


Exhibit A-2

"Text messages between Tim Silver, Eric Hillman, and Nick Rubin"



iMessage
Thu, Mar 16 at 2:05 PM

Eric Hillman

EH Am I on the wrong call?

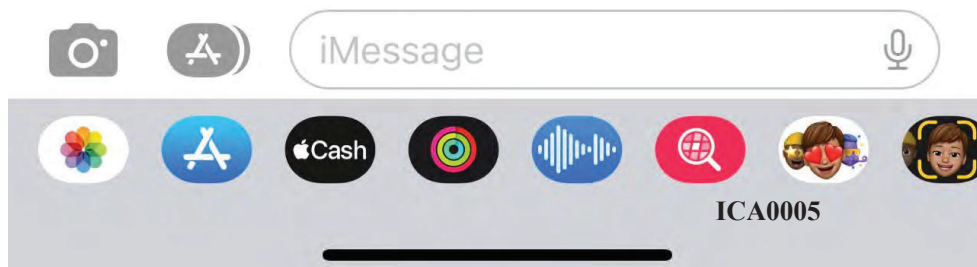
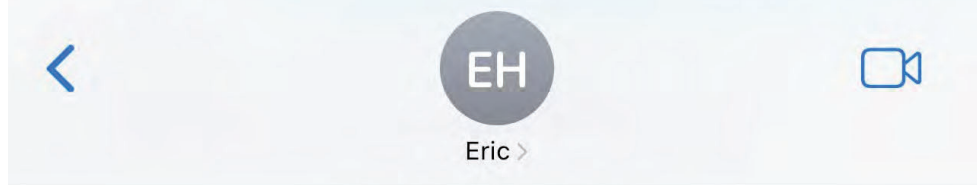


Exhibit A-3

"Text messages between Eric Hillman and Tim Silver"



Mon, Dec 19 at 5:58 PM

Just calling you back to follow up.
Wanted to get you before the 6pm
cutoff. Nothing urgent to discuss

Thu, Dec 29 at 3:24 PM



**Copy of 13 Week Budget
with GM% beginning
12-28-22.xlsx**

Office Spreadsheet · 24 KB

Fri, Jan 6 at 6:38 PM

Sorry Tim went to early dinner.
Missed lunch and I MF'r without food.
That went a lil longer than I expected
today. Guess we start again Monday



Missed eating today as well due to
that. Just wanted to touch base.
Enjoy your weekend. Talk to you
Monday

Mon, Jan 9 at 2:02 PM

Cal you right back

Fri, Jan 13 at 1:48 PM

Call you back. On one

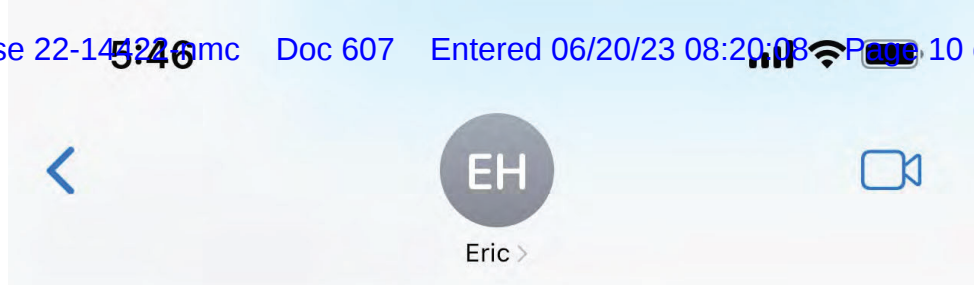
Mon, Jan 16 at 2:59 PM



iMessage



ICA0006



Fri, Jan 13 at 1:48 PM

Call you back. On one

Mon, Jan 16 at 2:59 PM

Thoughts in me letting Sam know there might be a change in CRO's. I spoke to Mike today and with marc roth this afternoon. Would CRO be my decision or yours? Im off but working by text.



Let's touch base tomorrow. For compliance reasons I can't text about material work stuff. My gut is no harm in letting Sam know what you are thinking and understanding process from his perspective. It's your call (the company) with our consent right. I am around to discuss over the phone if you would like

Wed, Feb 15 at 11:33 AM

Can you send me your coordinators info please

All good here based on Rita's emails?

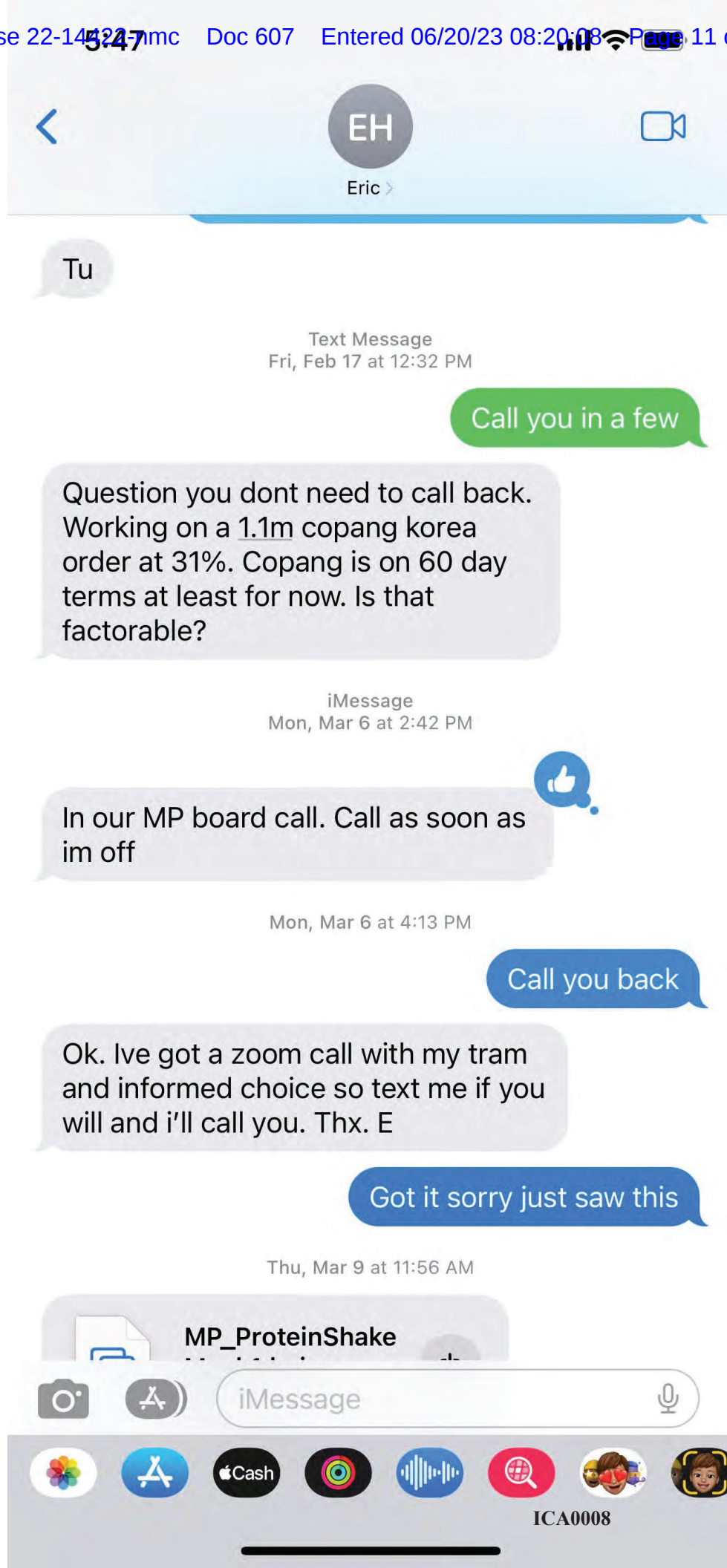
Tu

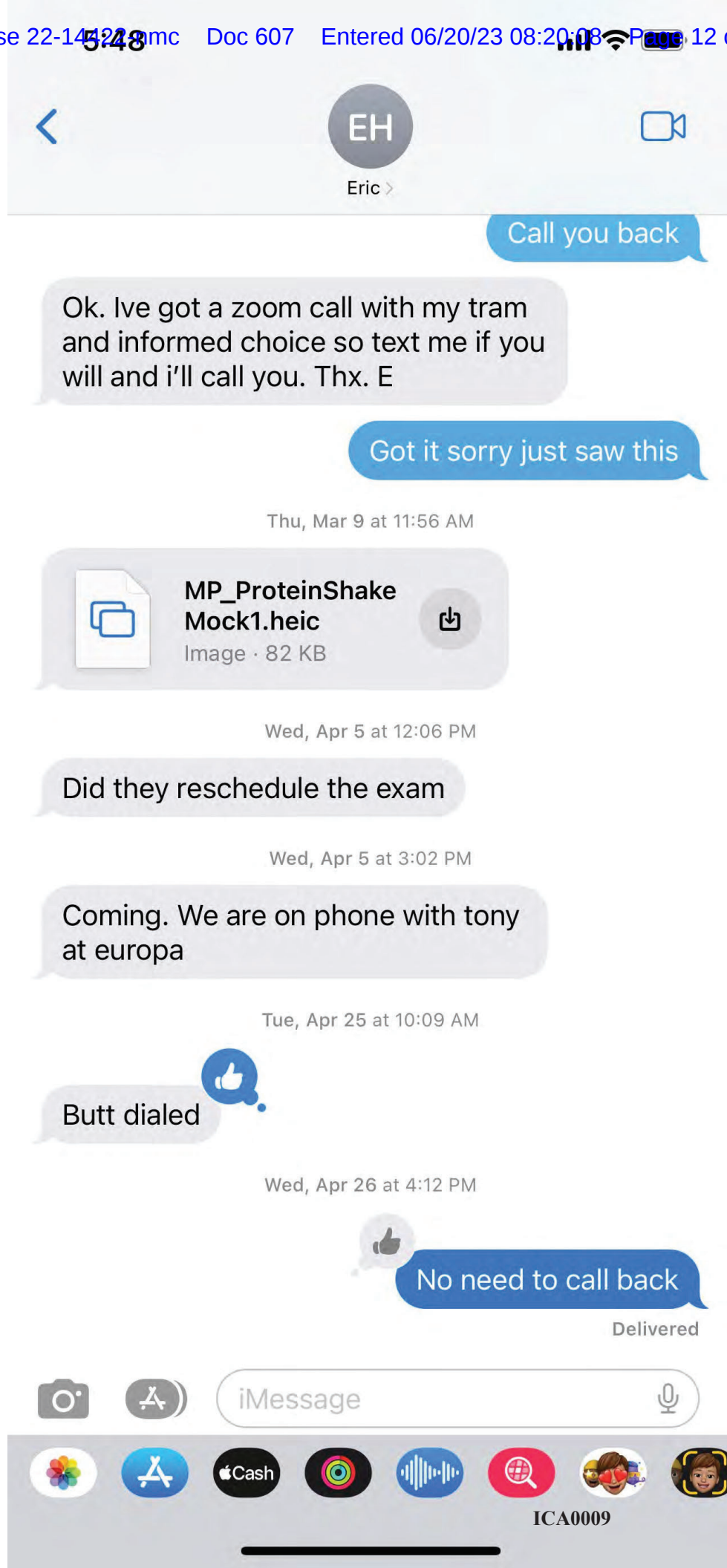


iMessage



ICA0007





5:48



Photo ▼

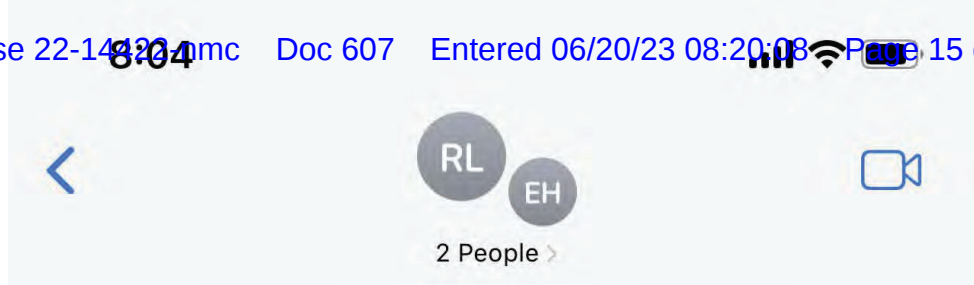
Done



ICA0010

Exhibit A-4

"Text messages between Tim Silver,
Ryan Lane, and Eric Hillman"



iMessage
Thu, Jan 12 at 11:50 AM

Eric Hillman



Ryan Lane

RL Just tried u Eric

Sat, Feb 25 at 9:05 AM

Eric Hillman

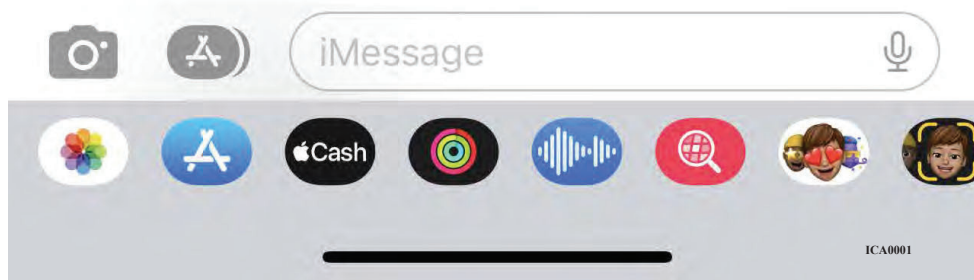
Just an odd note about europa. I could get rid of all accounting. Id have access to full mkting dept. They have office space to build a sales team. We could build out the drink mkt faster. Hub would bring 500k to bottom line each month with additional vendors using the program. Mgt tram thats in place is awesome and if it fell under MP I could help direct it. Just thoughts. Have you even spoken to AFI

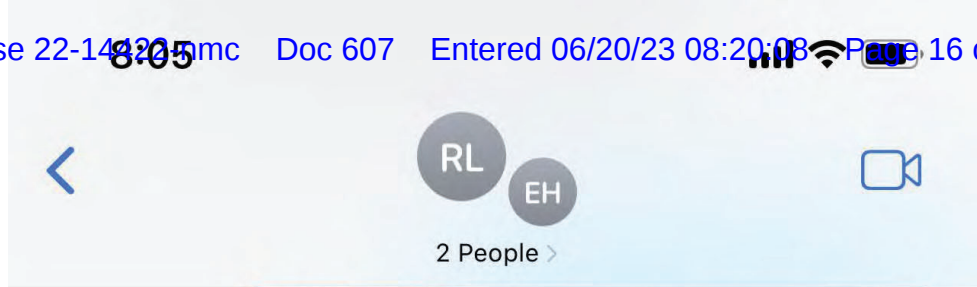
EH And no im not working on Sat. Lol

Haha breaking your rules!

Pete introduced us and we are going to try to speak next week

Fri, Mar 24 at 7:09 PM





Pete introduced us and we are going to try to speak next week

Fri, Mar 24 at 7:09 PM

Eric Hillman

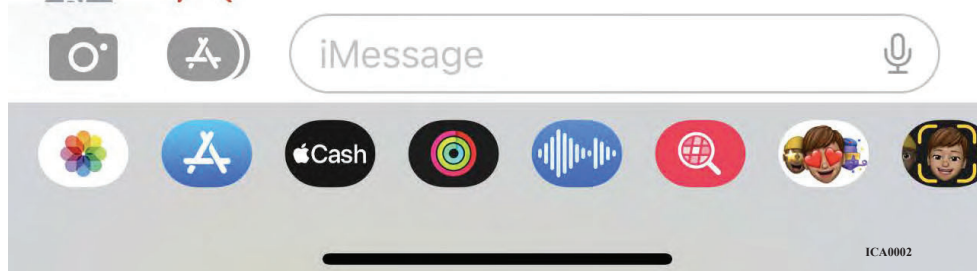
Just a teaser



EH

Looks great!

Ryan Lane



8:05



RL

EH



2 People >

Ryan Lane



RL

Mon, Mar 27 at 6:49 PM

Eric Hillman



Just so you know my motto. Go Big or Go Home. 200LBS choc and Van informed choice informed protein. 2 out the door today

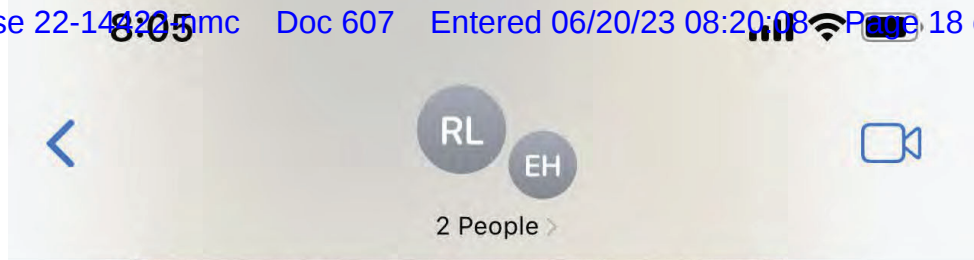
EH

That's huge. Is that \$1,500?? Sports



iMessage





EH Just so you know my motto. Go Big or Go Home. 200LBS choc and Van informed choice informed protein. 2 out the door today

That's huge. Is that \$1,500?? Sports teams that buy that?

Eric Hillman

EH \$1,600+\$75 shipping. Sold 2 today at 42%. Love it.

Ryan Lane

RL Holy cow!

Too big to bring home!

RL 42% gets me goin

RL That lid is the real deal with the clamp!

Yesterday 8:41 PM

Eric Hillman

EH Sorry guys just heard from Nick. Will 10am work?

Works for me. I can send a dial in

Ryan Lane

RL Works



iMessage

